***THE HON'BLE SRI JUSTICE G.BIKSHAPATHY**

&

THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.16172 of 2004

% 27-12-2004

B.Krishna Murthi s/o.late Suraiah

and others .. Petitioner

And

$ State of Andhra Pradesh, represented by

Its Principal Secretary, Revenue Department

A&R, Secretariat Buildings, Hyderabad

and another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri D.V.Sitharam Murthy

^ Counsel for respondents : Government Pleader for Services-II

?CASES REFERRED :

[1] AIR 1955 S.C. 191

[2] AIR 1978 S.C. 771

[3] AIR 1974 S.C. 1 = (1974) 1 SCR 771

[4] **AIR 1951 S.C. 41**

[5] **AIR 1952 S.C. 75**

[6] **AIR 1970 S.C. 1453**

[7] **AIR 2003 S.C. 1696 = (2003) 9 SCC 114**

[8] **AIR 1986 S.C. 431**

[9] **AIR 1982 S.C. 879**

[10] **AIR 1984 S.C. 541 = 1984 Lab.& Ind.Cases 301**

[11] **AIR 2003 S.C. 3569**

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 16172 of 2004

Between:

1 B.Krishna Murthi, s/o late Suraiah,
aged 66 years, Judicial Member, Special Court under A.P.Land

Grabbing (Prohibition) Act, BRKR Govt.Offices Complex,
Hyderabad.

2 J.Krishna Murti, s/o Narasimham,
aged 63 years, r/o Padmaraonagar, Secunderabad.
3 A.Venku Reddy, s/o late A.Ramchandra Reddy,
r/o Plot No.66, Nagole, Hyderabad.
4 M.Narasimhulu Naidu, s/o late M.Venkam Naidu,
r/o 16-3-808/1, II Lane, Haranadhapuram, Nellore.

..... PETITIONERS

AND

1 State of Andhra Pradesh rep., by its Principal Secretary (Revenue

Department A&R) Secretariat Buildings, Hyderabad.
2 The Registrar, Special Court under A.P.Land Grabbing (Prohibition)

Act, II Floor, BRKR Government Offices Complex, Tankbund Road, Hyderabad-63.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus that the a) petitioners i.e., Judicial Members of the Special Court constituted under Section 7 of the A.P.Land Grabbing (Prohibition) Act, 1982 are entitled to the same protection pay under Rule 3 of the Conditions of Service Rules for Chairman and Members of the Special Court under A.P.Land Grabbing (Prohibition) Act, in G.O.Ms.No.176 dated 13-02-1996 as amended from time to time in regard to deduction of only Rs.1,500/- of the pension accruable out of previous service in accordance with O.M.NO.45/73/97-P&PW(G) dated 2nd July, 1999 issued by Government of India for fixation of pay on re-appointment as Member of the Special Court, (b) if necessary declare G.O.Ms.No.358 dated 1-5-2004 issued by the respondent No.1 in so far as its non-application to judicial members of the Special Court constituted under the Act as offending Article 14 of the Constitution being an unreasonable and arbitrary classification; and (c)

consequently direct the 1st respondent to fix the pay of the petitioners by deducting only Rs.1,500/- from out of the pension drawn/drawable from previous service, while fixing the pay as Judicial Member and pay all consequential benefits arising therefrom forthwith.

Counsel for the Petitioner:MR.D.V.SITARAMAMURTHY

Counsel for the Respondent No.1 : GP FOR SERVICES II

Counsel for the Respondent No.2 : Mr.A.V.Sesha Sai, Advocate.

The Court made the following :

ORDER:

(*per* P.S.Narayana.,J)

The President and Retired Judicial Members of Special Court constituted under Section 7 of A.P. Land Grabbing (Prohibition) Act, 1982, hereinafter referred to as "Act", the writ petitioners herein, filed the present Writ Petition challenging the action of the 1st respondent in not extending the benefit of deduction of only Rs.1500/- out of total pension amount earned by reason of their past service in Higher Judicial Service from their Pay as Judicial Members of the Special Court on par with Revenue Members of the Special Court as was granted to such Revenue Members vide impugned G.O.Ms.No.358, Revenue (Act & Rules) Department, dated 1-5-2004 as arbitrary, illegal, discriminatory and offending Article 14 of the Constitution of India. It was specifically prayed for in the Writ Petition to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus that (a) petitioners i.e., Judicial Members of the Special Court constituted under Act are entitled to the same protection pay under Rule 3 of the Conditions of Service Rules for Chairman and Members of the Special Court under the Act in G.O.Ms.No.176, dated 13-2-1996, hereinafter in short referred to as "Rules" as amended from time to time in regard to deduction of only Rs.1500/- of the pension accruable out of previous service in

accordance with O.M.No.45/73/97-P&PW(G) dated 2-7-1999 issued by Government of India for fixation of pay on reappointment as Member of the Special Court; (b) if necessary declare G.O.Ms.No.358, Revenue (Act & Rules) Department, dated 1-5-2004 issued by the 1st respondent in so far as its non-application to Judicial Members of the Special Court constituted under the Act as offending Article 14 of the Constitution of India being an unreasonable and arbitrary classification and (c) consequently direct the 1st respondent to fix the Pay of the petitioners by deducting only Rs.1500/- from out of the pension drawn/drawable from previous service while fixing the Pay as Judicial Members and pay all consequential benefits arising therefrom forthwith. The 1st writ petitioner had sworn to the affidavit narrating all the details and also specifying how the said treatment is illegal and discriminatory as between the Judicial Members and Revenue Members of the Special Court.

The 2nd respondent filed a counter affidavit taking a stand that despite the correspondence in this regard specific orders had not been issued.

Sri D.V.Sitharam Murthy, the learned Counsel representing the writ petitioners made the following submissions. The learned Counsel contended that the action of the 1st respondent in not extending the

benefit of pay fixation in accordance with Office Memorandum dated 2-7-1999 issued by the Union of India in regard to ignoring of only part pension accrued after previous employment to the petitioners at par with Revenue Members of the Special Court is clearly a case of arbitrary classification and discriminatory, offending Article 14 of the Constitution of India. The learned Counsel also would maintain that Judicial Members and the Revenue Members of the aforesaid Special Court form a homogeneous class performing similar functions as ordained by Section 7 of the Act, enjoy similar service benefits such as Pay under Rule 3, D.A. under Rule 4, Leave under Rule 6, Pension under Rule 8, P.F. under Rule 9, T.A. under Rule 10, L.T.C. under Rule 11(b) of the Rules, Conveyance under Rule 13(b), facilities for Medical Treatment under Rule 14(b) and the like. The learned Counsel also would maintain that neither the Act nor the Rules provide for any dichotomy in relation to the service conditions of the Revenue Members and Judicial Members. Pay being an important condition of service, the Revenue Members and Judicial Members of the Special Court are entitled to parity in pay on principle of equal pay for equal work. The Counsel also would maintain that except for the difference in source of recruitment, both the streams i.e., Revenue and Judicial Members, converge into a homogeneous class and therefore there could be no dissimilar treatment in their appointment as Members of the Special Court in relation to any of the

service benefits. The learned Counsel also had pointed out that due to these disparities, repeatedly the Judicial Members are being driven to the Courts for obtaining suitable directions and had pointed out to the decisions of this Court in W.P.No.3281/2002 dated 25-4-2002 and W.P.No.191/2003 dated 6-11-2003. The learned Counsel also had pointed out to G.O.Ms.No.358, Revenue (Act & Rules) Department, dated 1-5-2004 and would contend that if necessary the said G.O. issued by the 1st respondent in so far as its non-application to Judicial Members of the Special Court constituted under the Act to be declared as unreasonable, arbitrary and offending Article 14 of the Constitution of India.

The learned Government Pleader for Services II had pointed out that though these members discharge similar functions, their original source of recruitment being different, unless the benefits given to the Revenue Members are specifically conferred on the Judicial Members too, the same cannot be extended to Judicial Members. The learned Counsel also would contend that on that ground inasmuch as the recruitment channel being different, merely because subsequent to the retirement these members had been appointed as Judicial Members and Revenue Members, inasmuch as there is reasonable classification, G.O.Ms.No.358, Revenue (Act & Rules) Department dated 1-5-2004 cannot be held to be bad in law being violative of Article 14 of the Constitution of India.

Sri A.V.Sesha Sai, the learned Counsel representing the 2nd respondent had taken this Court through the contents of the counter affidavit filed by the 2nd respondent and would contend that in spite of repeated requests of the 2nd respondent to suitably amend the service Rules and also to issue suitable orders, there is in action on the part of the 1st respondent in this regard.

Heard the Counsel on record.

The present Judicial Members – petitioners 1 and 2, and the retired Judicial Members – petitioners 3 and 4, of the Special Court under the Act had challenged the action of the 1st respondent in not extending the benefit of deduction of only Rs.1500/- out of total pension amount earned by reason of their past service in Higher Judicial Service from their Pay as Judicial Members of the Special Court under the Act on par with Revenue Members of the Special Court as was granted to the said Revenue Members in G.O.Ms.No.358 referred to supra. The Special Court constituted under Section 7 of the Act is comprised of a Chairman and four other members. The Chairman is mandated to be a person who is or has been a Judge of a High Court and of the four members, two are to be Judicial Members who are or had been District Judges and two are Revenue Members drawn from amongst the persons who had held or holding a post not below the rank of a District Collector. The

conditions of service in regard to the Chairman and members of the Special Court under the Act are governed by the Rules comprised in G.O.Ms.No.No.176, dated 13-2-1996 issued by the 1st respondent and the said G.O. was issued by virtue of the rule making power vested in the Government under Section 16 of the Act. Rule 3 as it originally stood read :

> "The Chairman shall receive a pay of rupees Eight thousand plus a special pay of Rs.1000/- per mensum and a Member shall receive pay in the scale of Rs.7300-100-7600 per mensum or such scales of pay as are applicable to the Chairman and Members of the Andhra Pradesh Administrative Tribunal.
>
> Provided that in the case of an appointment as Chairman, or as the case may be, a Member or a person, who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and who is in respect of or has received or has become entitled to receive any retirement benefits by way of pension and or gratuity, or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any drawn or to be drawn by him".

The Government had revised the Pay of Chairman of A.P. Administrative Tribunal and also Members of the said Tribunal vide G.O.Ms.No.421 dated 16-10-1998. It is further stated that in view of the same, the Pay of the Chairman of Special Court under the Act also was enhanced to Rs.26,000/-, plus Special Pay of Rs.1000/- by G.O.Ms.No.629 dated 12-8-1999 while in case of Members a new

criterion was fixed stating that the Member shall receive Pay which he drew previously or is drawing at the time of appointment. Under the said G.O. in place of a structured pay scale as was initially put in place, the last drawn Pay of the Member, Judicial or Revenue as the case may be, in his earlier service was protected. Further, incidentally, the parity in Pay of the Members of the Special Court with that of the Members of the A.P. Administrative Tribunal was no longer available and a dichotomy was created. By virtue of G.O.Ms.No.629 dated 12-8-1999 though the Pay of Chairman of the Special Court was enhanced to be in parity with that of Chairman of A.P. Administrative Tribunal, the pay of the Judicial Members of the Special Court was not enhanced to be brought in parity with the members of the A.P. Administrative Tribunal as was specified under Rule 3 as it originally stood. A representation dated 13-2-2002 was made pointing out the said disparities and the same was treated as W.P.No.3281/2002 suo motu by this Court and during the pendency of the Writ Petition, the 1st respondent issued G.O.Ms.No.207 dated 20-4-2002 substituting the following Rule in place of Rule 3 dated 13-2-1996 as hereunder :

> "The Chairman shall receive a pay of Rs.26,000/- plus special pay of Rs.1,000/- per mensum and a Member shall receive pay in the scale of pay of Rs.22,400-600-26,000 or such scales of pay as are applicable to the Chairman and Members of the A.P. Administrative Tribunal as amended from time to time.
>
> Provided that in the case of an appointment as Chairman or as

the case may be a Member of a person who has retired as a Judge of a High Court or who has retired from service under the Central Government or a State Government and who is in respect of or has received or has become entitled to receive any retirement benefits, by way of pension and/or gratuity or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any drawn or to be drawn by him".

In view of the said G.O. this Court had disposed of the aforesaid Writ Petition on 25-4-2002. Specific stand was taken in the said Writ Petition that the nature of duties discharged by the Revenue Members and Judicial Members of the Special Court under the Act are one and the same and hence there cannot be any disparity in any of the benefits of service or incidents of service under the Rules. It is further stated that when the entitlement of pension under Rule 8 of the Rules had not been granted in accordance with the revision in Pay under Rule 3 on par with Members of A.P. Administrative Tribunal certain Members of Special Court under the Act including the petitioners were constrained to approach this Court by W.P.No.191/2003 praying for the rate of pension at par with the Members of the A.P. Administrative Tribunal and this Court by order dated 6-12-2003 declared that the petitioners therein are also entitled to pension on par with the Members of the A.P. Administrative Tribunal. On representations made by various Officers of All India Service, Government of India while accepting the recommendations

of the 5th Central Pay Commission issued O.M.No.45/73/97-P&PW(G) dated 2-7-1999 and directed that the Pay of the reemployed Officers of All India Service upon such reemployment shall be after ignoring only a portion of the pension i.e., Rs.1500/- received for the previous employment and the orders were directed to be given effect from 18-7-1997. Thus by virtue of the acceptance of the 5th Central Pay Commission recommendations, any pensioner belonging to All India Service on reemployment is required to lose only Rs.1500/- from his pension due to be received or being received while fixing his Pay and the same would be contrary to proviso to Rule 3 of the Rules which contemplated a deduction of entire amounts receivable or being received as pension for past service rendered prior to retirement. This was made applicable only to the members of the All India Service. In view of the said directions one retired Revenue Member of the Special Court sought for the benefit of such deduction of Rs.1500/- only of his pension amount being drawn by him by virtue of a representation upon which the 2nd respondent had addressed a letter to the 1st respondent on 21-2-2004 and by amendment to Rule 3 of the Rules to extend the benefits of the Office Memorandum dated 2-7-1999 issued by the Union of India to both Revenue and Judicial Members of the Special Court. The Government of Andhra Pradesh even prior thereto had accepted the benefit granted under the Union of India Memorandum dated 2-7-

1999 to the Government officials not belonging to All India Service who are appointed as Chairman or members of the A.P. Public Service Commission after their retirement i.e., 18-7-1997. Thus the Government extended the above referred benefits to persons other than the Officers of All India Service having regard to the beneficiary content of the said Rule upon representations received from various sections of the Government officials who have been reappointed to other posts after their retirement. Pursuant to the proposal sent by the 2nd respondent seeking amendment of Rule 3 of the Rules on 1-2-2004 the 1st respondent addressed letter to the 2nd respondent directing suitable action to be taken to confer the aforesaid benefits to the members of the Special Court who belong to All India Service only vide letter dated 13-4-2004. It was not specified that the same facility is being extended to Judicial Members of the Special Court though these members also discharge same duties and functions as the Revenue Members. The 2nd respondent addressed a letter dated 23-4-2004 to the 1st respondent pointing out the discrimination between Judicial Members and also Revenue Members in this regard and prayed for issuance of necessary instructions by way of a G.O. in terms of Rule 16. The 1st respondent issued G.O.Ms.No.358 dated 1-5-2004 extending the above benefit of pay fixation ignoring only a portion of the pension i.e., Rs.1500/- received from the previous employment of All India Service Officers who are reappointed as

Revenue Members of Special Court after their retirement i.e., 18-7-1997. In relation to the extension of the said benefit to the Judicial Members of the Special Court, it is specified that necessary orders would be issued separately after detailed examination and the 2nd respondent was requested to forward proposals for amending of Rule 3 of the Rules accordingly. The said action of the 1st respondent in not extending the above facility of pay fixation to the Judicial Members of the Special Court under the Act on par with the Revenue Members is being challenged on the ground of arbitrary classification and being discriminatory and violative of Article 14 of the Constitution of India.

In the counter affidavit filed by the 2nd respondent it was specifically averred that as per Rule 3 of the Rules, the Government of Andhra Pradesh treated Judicial Members on par with the Revenue Members working in Special Court and there is no amendment to Rule 3 of the Rules and the proviso. The 4th petitioner herein and the former Members of the Special Court and the present Revenue Member Sri M.K.R. Vinayak filed W.P.No.191/2003 on the file of this Court and the Writ Petition was allowed by virtue of an order dated 6-11-2003 wherein it was held as follows :

> "The Members of these Tribunals having been treated equally in matters of service conditions cannot be discriminated converting the equals into unequals. The Government while enhancing the pay scales of Members of Special Court, ought

to have simultaneously amended the provision relating to the pension. Obviously there appears to be an omission in this regard. But that should not result in arbitrary and discriminatory treatment to the Members who are treated on par with the members of the Andhra Pradesh Administrative Tribunal for all purposes."

On receipt of Government of India Circular Memo No.45/73/97-P & PW (G) dated 2-7-1999, the Registrar, Special Court under the Act addressed a letter in Dis.No.138/2004/Regr/Est./SC dated 21-2-2004th to Secretary to Government, Revenue (A&R) Department, A.P. Secretariat, Hyderabad requesting the Government to amend Rule 3 of the Rules extending the benefit of Government of India Circular Memo dated 2-7-1999 to the Members of the Special Court, Judicial as well as Revenue Members. It is further stated that the Government of Andhra Pradesh by virtue of letter No.2745/A&R-1/2004 dated 13-4-2004 requested the 2nd respondent to take necessary action as per the recommendations of the 5th Pay Commission. The Government of India instructions in Letter No.25014/6/2000-AIS(II) dated 10-5-2001 of the Department of Personnel and Training read with Memo No.45/73/97-P & PW (G) dated 2-7-1999 of the Department of Pension and Pensioners Welfare to refix the pay of the Members of the Special Court under the Act who belong to All India Service pension to their appointment as Members of Special Court under the Act. In response the said letter dated 13-4-2004 the 2nd respondent addressed a letter

Dis.No.328/2004/Regr/Est/SC dated 23-4-2004 requesting the 1st respondent to issue necessary amendment to Rule 3 of the Rules for fixation of pay of the Members of the Special Court as per the Government of India Circular dated 2-7-1999 and the letter dated 13-4-2004. In the said letter dated 23-4-2004 G.O.Ms.No.79, General Administration (Ser-A) Department dated 20-3-2004 also was brought to the notice of the Government of Andhra Pradesh wherein the 1st respondent extended the benefit of Government of India circular dated 2-7-1999 to the Government officials in A.P.Public Service Commission other than All India Service Officers. It is also stated that the Judicial and Revenue Members in the Special Court are discharging the same functions and they are drawing same scales of pay and they are governed by the same set of Service Rules and while the things stood thus the 1st respondent issued G.O.Ms.No.358, Revenue (Act & Rules) Department dated 1-5-2004. Paragraphs 2 and 3 of the said G.O.Ms.No.358 read as follows :

> "The Government after careful examination decided to extend the above pay fixation method to All India Service Officers, who are reappointed as Revenue Members, Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act after their retirement with effect from 18-7-1997 and issued instructions in the reference 4th read above, with the concurrence of Finance Department vide their U.O.No.9289/04/A1/PSC/04 dated 6-4-2004.
>
> The proposals of the Registrar, Special Court sent with the

letter 5th read above, to extend the benefit to the Judicial Members on par with the Revenue Members, necessary orders in the matter will be issued separately after detailed examination."

It is also stated that in spite of requests to amend Rule 3 of the Rules, the 1st respondent addressed a letter No.16758/A&R/04 dated 17-11-2004 to the 2nd respondent stating that as per the recommendations of the 5th Central Pay Commission accepted by the Government of India in its office Memorandum No.45/73/97 P & PW(G) Department dated 2-7-1999 it applies to reemployed pensioners of All India Services only and will not be applicable to Judicial Officers who are covered by the recommendations of the 1st National Judicial Pay Commission and other Judgments of the Supreme Court of India delivered in All India Judges case. It is also specifically averred that the 2nd respondent never made any request to the 1st respondent to the effect that the Judicial Members are entitled to the benefits as per the recommendations of the 1st National Judicial Pay Commission. It is also stated that the Chairman and the Members of the Special Court, both Judicial and Revenue, are governed by the Rules under the Act and the said Rules do not discriminate the Judicial and Revenue Members in respect of pay and pension etc., and they stand on the same footing and hence they are liable to be treated equally for all purposes.

The main grievance ventilated by the writ petitioners is both the Judicial Members and Revenue Members are discharging the same duties and non-extension of benefit of deduction of only Rs.1500/- out of the total pension amount earned by reason of their past service in Higher Judicial Service from the Pay as Judicial Members of the Special Court when the same benefit was given to the Revenue Members, would be arbitrary and discriminatory, the same being violative of Article 14 of the Constitution of India. The stand taken by the 1st respondent as per the correspondence though no counter affidavit as such is forthcoming on behalf of the 1st respondent is that inasmuch as the Judicial Members emanate from Judicial Service and the Revenue Members emanate from All India Service, these two sets of Officers, though they discharge the same functions and the same duties, cannot be treated alike and hence the classification is reasonable and unless such benefits are specifically extended to the Judicial Members as well, the Judicial Members cannot claim any legal right to such benefits.

There is no dispute or controversy relating to several of the facts which had been narrated supra. There is also no controversy that when problems akin here unto arose, W.P.Nos.3281/2002 and 191/2003 were filed and the said Writ Petitions were disposed of, as already referred to supra, issuing suitable directions. It is also not in controversy that the Chairman and Members of the Special Court,

both Judicial and Revenue, are governed by the Rules under the Act and on a reading of these Rules it is clear that these Rules do not discriminate Judicial or Revenue Members in respect of Pay, Pension etc., and they stand on the same footing and to be treated equally for all purposes. However, the benefit of deduction of only Rs.1500/- out of the total pension amount earned by reason of their past service in Higher Judicial Service is not being extended to the writ petitioners though such benefit is given to the Revenue Members and on that ground G.O.Ms.No.358 dated 1-5-2004 is impugned as arbitrary and discriminatory being violative of Article 14 of the Constitution of India.

In **BUDHAN CHOUDHRY Vs. STATE OF BIHAR** while dealing with scope and effect of Article 14 of the Constitution of India it was held at para-5 as hereunder :

> "While Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In **PATHUMMA Vs. STATE OF KERALA** it was held that before a

person can claim to be discriminated against another he must show that all the other persons are similarly situate or equally circumstanced. Discrimination violative of Article 14 can only take effect if there is discrimination between equals and not where unequals are being differently treated. The view expressed by the Apex Court in **STATE OF J & K Vs. T.N.KHOSA** was followed in the decision referred (2) supra. In **CHIRANJIT LAL CHOUDHURI Vs. UNION OF INDIA** the Apex Court observed :

> "It must be admitted that the guarantee against the denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America "equal protection of laws is a pledge of the protecting of equal laws" Yick v. Hopkins (1885) 118 US 356 at p.369 and this means 'subjection to equal laws applying alike to all in the same situation' Southern Railway Co. V. Greene (1909) 216 US 400, 412. In other words, there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same".

In **STATE OF WEST BENGAL Vs. ANWAR ALI SARKAR** it was held :

> "It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situations, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same."

In **HARAKCHAND Vs. UNION OF INDIA** it was held :

> "When a law is challenged as violative of Article 14 of the Constitution of India it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act, the Court has to apply a dual test in examining its validity (i) whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and (ii) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object."

In **STATE OF HARYANA Vs. JAI SINGH** while dealing with the test for valid classification it was held by the Apex Court :

> "While considering the challenge based on Article 14 of the Constitution of India as to the arbitrariness in the impugned classification, the Court has to examine whether the impugned classification satisfies certain Constitutional mandates or not. They are (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (ii) that the differentia must have a rational relationship with the objects sought to be achieved by the Act".

In **UNION OF INDIA Vs. R.G. KASHIKAR** the Apex Court at para-8 observed :

> "We find it rather difficult to subscribe to the view expressed by the learned Judges that the although the petitioners before them i.e., Instructors like the respondents here, as Central Government employees should have also been given the benefit of revised pay scales, the proposal to transfer the establishment of the National Fitness Corps to the State

Government had the effect of decentralizing the National Discipline Scheme and the Instructors had become surplus at the Centre. Nor can we support their conclusion that classification between the Central Government employees who work on Central Government activities and those who work on State Government activities, was founded on rational and reasonable foundation and therefore the Instructors belonging to the former class could be treated on a different basis in the matter of their pay-scales and other benefits. The underlying fallacy of the reasoning lies in assuming that the Instructors under the Scheme ceased to be Central Government employees merely because of the proposal to transfer the establishment of the National Fitness Corps to the State Governments. They continued to be employees of the Central Government till the process of absorption was completed. Until then they were still retained in Central Government service although allocated to different States, and as such employees they were entitled to be treated alike. In order to pass the test of permissible classification, two conditions must be fulfilled namely : (1) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of group, and (2) That that difference must have a rational relation sought to be achieved by the Act. That test is clearly not fulfilled in the case of Instructors under the Scheme. The distinction sought to be drawn by the learned Judges between the two classes of Central Government employees i.e., those who work on Central Government activities and those whether work on State Government activities, is without any rational basis and the Instructors under the Scheme could not be treated as a class distinct and separate. Such classification or differentiation of the Instructors under the Scheme as a class of Central Government employees for depriving them of the benefits in 'matters relating to employment' which expression includes matters relating to salary, periodical increments, leave, gratuity, pension, age of superannuation etc., although they continued to remain Central Government employees till the date of absorption, was per se discriminatory and violative of Articles 14 and 16 of the Constitution of India. The judgment of the Bombay High Court in Eknath's case (Spl.Civil Application No.1753 of 1974 decided on July 28, 1976) does not lay down good law and is accordingly overruled."

The Constitutional mandate of equality specified in Articles 14 and 16 of the Constitution of India in case of employees similarly placed discharging same function, duties and responsibility had been well recognized by the Apex Court in the realm of service jurisprudence which needs no repetition in elaboration at the hands of this Court. In **RANADHIR SINGH Vs. UNION OF INDIA** a three Judge Bench of the Apex Court observed at paras 6 and 8 as hereunder :

> "……..We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.
>
> …….
>
> It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get.

To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'To each according to his need', it must at least mean 'equal pay for equal work'. The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic para 2 of Section 33 of the Rumanian Code. Indeed, this principle has been incorporated in several Western labour Codes too. Under provisions in Section 31 (g.No.2d) of Block I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements.. In accordance with Section 3 of the Grundgestz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given unversal significance (vide : International Labour Law by Istvan Szaszy p.265). The preamble of the Constitution of the International Labour Organisation recognizes the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'Equal pay for Equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

Similar views were expressed by the Apex Court in **P.K.RAMACHANDRA IYER Vs. UNION OF INDIA .** In **STATE OF WEST BENGAL Vs. PANTHA CHATTERJEE** the Apex Court dealt with Articles 16 and 39(d) of the Constitution of India in the context of West Bengal Home Guards Act 11 of 1962 where Pay parity was claimed by part time Border Wing Home Guards (BWHG) vis-à-vis other regular BWHG and Border Security Force personnel wherein the part-time Border Wing Home Guards filed Writ Petitions complaining that they were being discriminated vis-à-vis other regular BWHG of West Bengal and the Border Security Force personnel as they had also been performing similar duties and discharging same responsibilities. The main plank to oppose the Writ Petitions filed by them has been that the Home Guards is a voluntary organization and the part time BWHG are entitled to honorarium and they are to be paid only as and when their services are required and utilized and their appointment was not to exceed for a period of more than three months except in cases where it is recommended otherwise by the authorities of the Border Security Force. The learned single Judge issued certain specific directions that part time members of the BWHG will be treated at par with the whole time staff of the BWHG and they would get all the privileges of the State Armed Police as extended to a full time Border Security Wing Home Guards and all the benefits available to the West Bengal Government Servants, for

example, fixation of pay, benefit of provident fund, gratuity, retrial benefits and allowances and leave etc., shall also be made admissible to the writ petitioners, arrears of service benefits were also directed to be given to them since the time of their joining and a further direction was given to absorb them irrespective of the age. The Division Bench also upheld the findings recorded by the learned single Judge. The Apex Court while dealing with the Appeals preferred by the State of West Bengal while deciding the matters held :

> "One thing which deserves to be noticed is that duties of the permanent Border Wing Home Guards and part time Border Wing Home Guards are the same, and performed under the same situation and circumstances but there has been disparity in their emoluments and other facilities, necessities for performing their duties. It is true that BWHG could not compare themselves with BSF personnel but the difference between the permanent staff and the part time staff which had been made in the scheme was obliterated and rendered ineffective. There is no real distinction between the two, namely, the permanent BWHG and the part time BWHG in absence of non-release of the latter after three months of the appointment, as per the Scheme. It has not been indicated by the appellants or the Union of India that the petitioners were ever disengaged of their assignment temporarily or the State Government had availed of their services after due and prior permission of the Central Government, or they were ever free to resume their old vocational pursuits. In fact the part time BWHGs has already put in about 10-15 years of service without break. It is in the affidavit of the authorities that BWHGs are under operational command of BSF authorities, which deployed for patrolling along Indo-Bangladesh border. In the background of what has been indicated above the part time BWGHs cannot be treated as volunteers engaged in casual nature of work so as to be termed as part time staff of Government of West Bengal. So called part time Border Wing Home Guards could not be treated differently from the permanent staff of the BWHG and are to be accorded parity with them".

No doubt, submissions at length were made relating to validity of G.O.Ms.No.358, dated 1-5-2004 issued by the 1st respondent. The main grievance ventilated is its non-applicability to Judicial Members and the same being violative of Article 14 of the Constitution of India. As per the provisions of the Act and also the Rules referred to supra, when the Revenue Members and Judicial Members are discharging the same functions and same duties, especially in the light of the stand taken in the counter affidavit filed by the 2nd respondent and also the Rules referred to supra, there is no reasonable nexus for the alleged classification, if any to be drawn in between the Revenue Members and the Judicial Members of the Special Court under the Act and as far as the benefits are concerned, it is made clear that all the benefits to which the Revenue Members are entitled to, the Judicial Members are also entitled to the same as well and if not it would amount to arbitrary exercise of power and definitely discriminatory and the same would be violative of Article 14 of the Constitution of India. In the facts and circumstances, it is suffice to declare that the writ petitioners/Judicial Members of the Special Court under the Act are entitled to the same benefits inclusive of the deduction of only Rs.1500/- out of the total pension amount earned by reason of their past service and they stand on the same footing as the Revenue Members. In view of the aforesaid direction, let a

mandamus be issued directing the 1st respondent to fix the Pay of the petitioners also by deducting only Rs.1500/- out of the pension drawn/drawable from the previous service with effect from 18.7.1997 or the date of resuming the post of Judicial Member, whichever is later and also to pay all consequential benefits arising therefrom. The Judicial Members who held the post under the Act after 18.7.1997 and later laid down their office after their tenure are also entitled for this benefit.

The Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : -12-2004

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute to the extent indicated above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Twenty Seventh day of December Two Thousand and Four.

ASSISTANT REGISTRAR

To:

One Fair copy to the Hon'ble Shri Justice G.Bikshapathy (for his Lordship's kind perusal)

One Fair copy to Hon'ble Shri Justice P.S. Narayana (for his Lordship's kind perusal)

1 Principal Secretary to Government, (Revenue Department A&R),

State of Andhra Pradesh rep., by its Secretariat Buildings,

Hyderabad.

2 The Registrar, Special Court under A.P.Land Grabbing (Prohibition)

Act, II Floor, BRKR Government Offices Complex, Tankbund Road, Hyderabad-63.

3. 2 C.Cs. to Government Pleader for Services-II,

High Court of A.P.

High Court Buildings,

Hyderabad.

4. 2 C.D. copies

5. 8 L.R. copies

6. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association Library, High Court

Buildings, Hyderabad.